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**Record: 15****Title:** Up in the air.**Subject(s):** CLEAN Air Act Amendments, 1990; ENVIRONMENTAL law -- Economic aspects -- Pennsylvania -- Pittsburgh**Source:** Executive Report, Mar94, Vol. 12 Issue 7, p26, 3p, 2bw**Author(s):** Sawka, Raelin**Abstract:** Reports on skepticism of officials in Pennsylvania over the enactment of the Clean Air Act amendments in November, 1990. Economic impact of the amendments; Implications of ozone regulations; Classification of Pittsburgh as a moderate ozone nonattainment area; Creation of the Northeast Ozone Transport Region; Pittsburgh's request for redesignation.**AN:** 9410050348**ISSN:** 0279-1382**Database:** Business Source Elite

Section: UPDATE: ENVIRONMENT

## UP IN THE AIR

**Redesignating the region's air quality from its current poor ranking could give economic development a boost, but there is some skepticism whether the rating was deserved in the first place.**

When Congress enacted the Clean Air Act amendments in November 1990, most people were in favor of the new regulations intended to eliminate air pollutants such as acid rain and smog. Even most local businesses, into whose pockets government regulations dig deepest, gave a nod to legislation that would clean up the nation's air. That was until its full economic impact became evident in the seven counties - Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland -- that make up the Pittsburgh-Beaver Valley area.

Small and large businesses alike have invested hundreds of millions of dollars into new equipment that brought gaseous emissions from their operations into compliance. Conservative estimates place the act's annual cost to domestic business nationwide at \$75 billion. LTV Steel estimates it would cost as much as \$100 million to install air quality control equipment at the Pittsburgh works in Hazelwood, and Allegheny Power expects to invest as much as \$1.7 billion to comply.

The particular sore spot for county and state government officials, economic development leaders and business owners is the section of the act dealing with the reduction of ground-level ozone, which is a large component of smog. The Pittsburgh-Beaver Valley area was designated as a moderate nonattainment area in 1990, yet air quality data indicated that the region had achieved compliance with the regulations by then. Several officials believe the EPA unnecessarily subjected this area to ozone regulations, making one county commissioner so frustrated that he even suggested a cover-up was taking place.

Subsequently, officials from the seven counties -- including Allegheny County Commissioner Tom Foerster and State Sen. Michael Fisher -- formed a coalition to exert pressure for changes in the regulations. Citing heavy workloads and inaccurate readings from the air quality monitors, the

Pennsylvania Department of Environmental Resources was slow to request that the EPA change the amount of regulation needed in this area. It took a resolution by the state senate to spur the DER into action.

"We feel that the federal and state governments are both using data that is far outdated," says Foerster. "It is unfair to us. It's unthinkable to operate on data that's Five years old."

### **Chemical Reaction**

Unlike many environmental regulations that affect specific pollution sources such as landfills, ozone regulations apply to a wide variety of businesses. This is because the three primary pollutants -- volatile organic compounds (VOCs), nitrogen oxide (NOx) and carbon monoxide (CO) -- are found in common, everyday products, such as gasoline, paints and solvents. In the presence of sunlight, VOCs mix with NOx and CO to form ground-level ozone, a lung irritant and health risk.

The ozone regulations involve a region's ability to achieve air quality readings of 0.12 parts per million of ozone-causing pollutants. The EPA has classified zones across the nation according to the level of VOCs, NOx and CO found in the atmosphere. An ozone attainment classification means that the area has less than 0.12 parts per million. In 1990, Pittsburgh was classified as a moderate ozone nonattainment area -- two steps away from achieving ozone attainment -- even though the current air quality data showed no readings in excess of the 0.12 parts per million.

The discrepancy is blamed on the EPA's rating system. Some designations were based on the fourth highest reading taken between 1987 and 1989. When the Clean Air Act went into effect, the EPA made arbitrary designations based on data that may have been anywhere from one to 10 years old.

Unless it is requested, the EPA does not automatically review a region's most recent data before a designation is assigned. Critics of the EPA's methods claim that abnormally high readings taken during the summer of 1988 -- the third hottest summer since 1895 were used for the Pittsburgh-Beaver Valley area. Higher temperatures increase reactions between VOCs, NOx and CO. The moderate nonattainment designation was based on a reading of 0.149 parts per million, measured at one Allegheny County site in 1988. Ozone data collected from 1991 to 1993 indicate 0.119 parts per million of pollutants,

But even if the EPA had used 1990 data to designate the region, it is unlikely that the ozone attainment rating would have been different. Data from 1987 through 1990 still slightly exceeded the limits. And the 1990 data has since been invalidated because of monitoring equipment problems.

Regulations are further complicated by the EPA's creation of the Northeast Ozone Transport Region -- 13 states stretching from Virginia to New England with serious ozone problems. Unlike pollutants that are deposited close to their source, ozone travels. Therefore, rural areas like Greene County -which does not exceed the 0.12 parts per million --must comply with the same regulations as the nonattainment areas. Compliance could cost as much as \$100,000 for a small manufacturer or \$30,000 for a privately owned gasoline station.

"The EPA enacted the Northeast Transport Region because virtually every major area from Washington, D.C., north was in violation of the ground-level ozone standard," says Wick Havens, acting chief of the EPA's air resources management. "All of us contribute to the ozone problem. Congress just chose to draw a line somewhere and that left West Virginia and Ohio out."

Chester R. Babst III, partner at law firm Babst, Calland, Clements and Zomnir, P.C., stresses the

importance of companies becoming involved in the process of creating new laws and regulations, even if they haven't been affected by environmental regulation before.

"States are developing stricter regulations," says Babst, "and those regulations apply to a broader range of sources than ever before. Companies are getting surprised by the increase in requirements."

Babst offers an example of how regulations can be put into place without any checks. In 1981, a single industrial source in the West Virginia panhandle caused high sulfur dioxide readings. Since then, the readings have never exceeded the standard for sulfur dioxide. The plant, in fact, shut down. Nevertheless, the EPA designated the region as a nonattainment zone for sulfur dioxide. Today, a company emitting sulfur dioxide would most likely not be permitted to move there because of the status.

The Pittsburgh-Beaver Valley area has found itself in the same situation. Because of a regulation commonly referred to as offset controls, a business wanting to locate here must prove that the ratio of emission reductions to new emissions it would introduce is at least 1.15 to 1. Bill Charleton of DER's southwest regional office said that it can be almost impossible for a business to prove an offset ratio. Because a majority of the reduction in ozone-causing pollutants occur due to the attrition of older pollution sources, he says, this type of data is not hard evidence and is difficult to obtain.

Foerster believes that these regulations have hampered economic growth. "We're regulated right out of future development. If a company wanted to come in today, even with the newest equipment and best technology, we couldn't issue a permit."

Companies have used other methods to obtain permits when relocating to this area. Metallized Paper Corp. of America bought the rights from USX Corp. to release pollutants, rights that USX had saved from an earlier coke plant closing. USX can recall some of those rights from Metallized Paper if it wants to produce coke again. Other methods include paying an existing source to cut emissions. Though ingenious, these strategies are difficult to implement, and many companies figure it's not worth it - especially since they can move to an area without ozone-related regulations less than two hours from Pittsburgh.

The permits issue got the Southwestern Pennsylvania Growth Alliance and the Pennsylvania Economy League behind the redesignation request. James Linaberger, the Growth Alliance's director, says a company wanted to move to Greene County, but because of the offset controls, it could not secure a permit -- even though the county's VOC and NOx emission are well below standard. The company located in West Virginia, just 12 miles across the border.

"Our requirements to meet compliance are more strict than the two adjacent states because we are in the ozone transport area," says Jay Aidridge, president of Penn's Southwest Association, an economic development group that recruits new businesses to southwestern Pennsylvania. Aidridge declined to go into detail about competitive problems with Ohio and West Virginia: he believes representatives from those states could use his remarks in their efforts to attract new companies.

Roger Westland of Allegheny County's Air Quality Control department said the county has helped new businesses to acquire permits by providing data establishing an offset ratio, but it's been a difficult process. Westland couldn't provide figures on how many businesses have opted not to locate here because of the air quality regulations. Despite the haziness of the true negative impact, many believe that an upgraded rating will encourage economic growth.

Others think that redesignation will have a different effect, increasing pollutants. Some environmental

organizations believe the growth of industry that emits air pollutants will bring the levels of VOCs, NOx and CO back up over the current limit.

### **Environmental Costs**

"It's too close at this point for them to be seeking reclassification," says Nancy Parks, clean air chair for the Pennsylvania chapter of the Sierra Club. "This redesignation is a great concern for us. Pennsylvania is very much a borderline area. If we have another long, hot dry spell, the area could get into nonattainment again . . . . We need a margin of safety before we do this."

Other organizations are more optimistic. Brian Hill, director of the western Pennsylvania office of the Pennsylvania Environmental Council, says that while his group is cautious about the air quality data, in general it supports the redesignation efforts. "As long as you use the offset ratio," he says, "you're reducing the amount of pollution."

Even though the Sierra Club and a Pittsburgh-based organization, GASP, object to the redesignation, neither did so formally during a public hearing in December, nor in writing during a one-month review period.

While many regulations would remain in effect if redesignation is obtained, concerns are not without warrant. The official 1991-93 readings from nine monitoring sites in the Pittsburgh-Beaver Valley area placed the level of VOCs and NOx at a borderline 0.119 parts per million. Other factors will affect the EPA decision as well, including the number of exceedances of the limit during any three years. The region had two in 1991-93.

To obtain the redesignation request, DER must prove its data to be correct and not a result of unusual conditions. Once DER has proved that the reduction of ozone-causing pollutants is a real and permanent trend, it must also prove that future growth will not cause an increase. Last November, DER submitted a 72-page request for redesignation to the EPA, which can take as many as 18 months to act. At press time, Todd Ellsworth, an air pollution chief in the EPA's Region Three office, was not ready to comment on the request. So how would redesignation help economic growth? By avoiding the implementation of tougher regulations down the road, says Havens. A current EPA regulation requires all ozone nonattainment regions to obtain a 15% reduction in VOCs, NOx and CO by 1996. If current regulations won't bring this reduction, then the state must create more. According to the DER, the Pittsburgh-Beaver Valley area is not likely to achieve the reduction without more stringent controls. If the EPA grants the redesignation, the area does not have to meet the 15% reduction. Havens says this could save local businesses money and encourage growth.

For now, the status of regulations for the Pittsburgh-Beaver Valley is still up in the air.

### **ILLUSTRATIONS**

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By Raelin Sawka

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